

has not confined his attention to the sole technical point submitted for the decision of the Court, but, in the expression of his opinion upon the circumstances and law of the case, has taken the opportunity of enlarging upon the constituents of contempts in general, their relation to society as now constituted, and the law which he considers applicable to them. I cannot coincide in his opinions, and will not diverge from the question before the Court, which is confined within the comprehensive question put to the plaintiff in error by the Chief Justice—have you a Writ of Error in a case of this sort? or, in other words—does a Writ of Error lie in this case? It becomes, therefore, essential to ascertain what the case is, and the limit of the particular controversy, which can only be supplied by the record itself, and it must be examined for that purpose, because the Court cannot be influenced by facts or suggestions beyond it. The completeness of the record is assumed because no suggestion of diminution or falsification has been made. A brief statement of the proceedings of record leading up to the judgment complained of, may be made, only however as explanatory of the subject, but without in any way adjudging upon the facts or incidents themselves upon which that judgment was founded.

In the last criminal term of the Court of Queen's Bench for this district, presided over by a Judge of this Court, the Hon. Judge Drummond, a rule for attachment was issued by the Court against the plaintiff in Error, a member of this bar, and then conducting the Crown business before that Court, for a contempt alleged to have been previously committed by him in the publication under his name, in two numbers of the *Montreal Gazette*, both filed of record, of libellous, insulting and contemptuous statements and language, concerning a Judge of the Court of Queen's Bench, in reference to his judicial conduct in a certain judicial matter before him, in those statements mentioned, and which it was alleged tended to prejudice the administration of justice, &c., &c. The plaintiff in Error appeared to the rule, and after the rejection of his recusal against the presiding Judge, interrogatories were exhibited against him tending

to identify him as the author and writer of those statements, but were not responded to, but the plaintiff in Error produced and filed of record, an answer in writing to the rule for attachment, in which he set out a variety of objections in fact as well as law, against the proceeding, the relevancy or pertinency of which objections, it is not at present necessary to inquire into, but declaring that whilst he did not admit his authorship of these statements, he at the same time declared that he did not deny his authorship of them, and after reiterating in his answer certain injurious expressions against the honorable judge with reference to the original proceedings, out of which this affair arose, the plaintiff in error concluded by asserting his right to make those offensive statements.

After having filed his elaborate answer, he moved to quash the rule upon grounds set out in his motion, which having been rejected by the Court, he subsequently produced and filed of record his declaration in writing, affirming that as the honorable judge had expressed his absence of intention to impute personal misconduct to him in the original matter, he (the plaintiff in error) withdrew his injurious and insulting statements against the honorable judge. This declaration was filed on the 2nd of November, and was succeeded on the following day by the judgment complained of, in which the Court declared the plaintiff in error guilty of contempt, and fined him to the amount of \$40, and to remain committed until paid. It is manifest that the proceedings referred to above were in a matter of alleged contempt, that the judgment was rendered upon such contempt, and by a Court of competent jurisdiction entitled to cognizance of such a matter. It may be added that the proceedings were before a Court of Record, acting not according to the common law by a jury, but in a summary manner, according to the common law by attachment.

Upon the particular point submitted to the Court, it is plain that the merits of the contempt do not fall within the province of this Court to express any opinion upon, or whether the publications referred to were libellous or not, or the language contained in them commendable or respectful: at present, our duty